

# International Privacy Law v. Internet Business

---

**How does a company reaching dozens of foreign jurisdictions keep out of a privacy quagmire? This session will identify the issues of concern and illustrate how eBay and others manage the challenge.**

Scott R. Shipman  
Senior Counsel, Global Privacy Practices  
eBay Inc.  
[scott@ebay.com](mailto:scott@ebay.com)  
Skype: shippycalifornia

# Privacy Headlines

## Data Scandals Include Plenty of Big Names

CIO News Alerts: SEP 30, 2005 09:42:18 AM...

A data scandal roll call would include big names in nearly every industry. Bank of America, LexisNexis, ChoicePoint, Time Warner, DSW Shoe Warehouse, T-Mobile and the University of California, Berkeley, to name a few, have recently experienced data security breaches.

## HSBC Credit Card Data Exposed in Security Breach

Finextra, UK - April, 2005  
British bank HSBC is notifying over 180,000 of its customers of a data security breach at a retailer that could have

## Numbers Grow in LexisNexis Security Breach

LinuxInsider.com, CA - April, 2005

... of the biggest computer-security breaches ever, personal data on 310,000 ... was uncovered after a billing complaint by a customer ...

## DSW Customers Warned About Security Breach

NBC4.TV, CA - April, 2005

The shoe store chain Discount Shoe Warehouse says a **breach** of its computer system was worse than originally thought. DSW said as ...

# Where we're headed

---

- ☐ eBay briefly
  - ☐ International Privacy Framework
  - ☐ Specific compliance issues
  - ☐ (Hopefully) Helpful resources
-

# eBay Privacy Defined

---

- Our privacy principles:
  - We will not sell or rent your information to third parties for their marketing purposes
  - We adopt the Fair Information Practices of notice, choice, access and security – you can always opt-out of marketing emails
- Our community value: An open, honest environment brings out the best in people

**eBay most trusted on privacy, study finds**

**Consumers say overall reputation most important**

June, 2004

**SAN FRANCISCO** - Online bazaar eBay Inc. is the most trusted U.S. company for privacy, according to a new consumer study. . .

# International Privacy Framework

---

- ❑ **EU**
- ❑ **Asia & Pacific**
- ❑ **US**

EU Data Directive, Implementing member state legislation, Article 29 Working Party. The general structure is centralized on an EU wide basis with each member state implementing more strict local implementations with various interpretations of what constitutes jurisdiction, separate legal entities for marketing, opt-in v. opt-out, unambiguous consent, consideration and so on.

---

# International Privacy Framework

---

- ❑ EU
- ❑ Asia & Pacific
- ❑ US

APEC principles based on EU framework but aimed at a more moderate, less-business-impact approach while maintaining the privacy rights of individuals. A balance between the EU and US approaches. Australia, Japan, Korea, as well as countries like Canada and others have adopted similar approaches here.

---

# International Privacy Framework

---

- ❑ EU
- ❑ Asia & Pacific
- ❑ US

State by state approach with California the only state with privacy enumerated in the state constitution. Federal regulation in limited fields of Financial, Health, Child and Credit Reports as well as certain technologies like Spam, FAX, Telephone. Omnibus privacy legislation likely in the form of Security Breach and possibly morphing into broad privacy principle based legislation.

---

# Specific Issues of Concern

---

- ❑ Jurisdiction
- ❑ Onward Transfer
- ❑ Legitimate processing
- ❑ Filings
- ❑ Employees
- ❑ Retention
- ❑ Disclosure to third parties

*Jxn complicated by desires  
to protect consumer*

**Jurisdiction** issues can present additional compliance and liability quickly. Countries often have different interpretations of what constitutes processing. Some countries may claim jurisdiction based on the use of cookies while other countries may try to deny jurisdiction as a result of a lack of resources to answer consumer complaints. If jurisdiction is found, then a host of compliance costs and measures may need to be budgeted.

---



# Specific Issues of Concern

---

- ❑ Jurisdiction
- ❑ Onward Transfer
- ❑ Legitimate processing
- ❑ Filings
- ❑ Employees
- ❑ Retention
- ❑ Disclosure to third parties

Lack of unified approach  
complicates transfers

**Onward Transfer** remains one of the most complex areas. As globalization continues, personal information travels further distances and is processed around the globe. Consent, Model Contract, and Binding Corporate privacy rules may be used to help reach global compliance while the U.S. Safeharbor agreement can be used to facilitate U.S. transfers. Some countries prohibit onward transfers unless the recipient country has an adequacy finding or explicit consent is received from the data subject. This may all but eliminate the opportunity to select particular outsourcing providers.

---

# Specific Issues of Concern

---

- ☐ Jurisdiction
- ☐ Onward Transfer
- ☐ Legitimate processing
- ☐ Filings
- ☐ Employees
- ☐ Retention
- ☐ Disclosure to third parties

*Marketing purposes are generally not 'primary'*

**Legitimate processing** or use of the information must be for the primary purpose for which the information was provided, a secondary use that the user consented to, or a use that falls within an exception such as “necessary for the purposes of the legitimate interests pursued by the controller . . . or parties to whom the data are disclosed except where the individual’s privacy interests override”. The legitimate interests in some instances include the security of the data, the safety of the customers, as well as the security and law enforcement interests of governments, data owners, and the company.

---

# Specific Issues of Concern

---

- ❑ Jurisdiction
- ❑ Onward Transfer
- ❑ Legitimate processing
- ❑ Filings
- ❑ Employees
- ❑ Retention
- ❑ Disclosure to third parties

*Filings may create other legal or corporate issues*

**Filings** within a specific jurisdiction are relatively easy to complete. However, maintaining their accuracy and obtaining the information to meet the filing requirements can be very time consuming and costly. Further, failure to meet the representations in your filings can lead to very difficult DPA relationships as well as liability costs. Filings are complicated by most of the other specific areas of concern.

---

# Specific Issues of Concern

---

- ❑ Jurisdiction
- ❑ Onward Transfer
- ❑ Legitimate processing
- ❑ Filings
- ❑ Employees
- ❑ Retention
- ❑ Disclosure to third parties

*Employee privacy issues  
morph into labor issues*

**Employee** personal information is regulated similarly to consumer data in most countries. As such, it is more often overlooked from a compliance viewpoint. Consent can present a more difficult compliance challenge and many companies may choose a different compliance method for employee versus consumer data.

---

# Specific Issues of Concern

---

- ❑ Jurisdiction
- ❑ Onward Transfer
- ❑ Legitimate processing
- ❑ Filings
- ❑ Employees
- ❑ Retention
- ❑ Disclosure to third parties

Retention has an evil twin  
to watch out for, deletion

**Retention** of personal data is one of the hottest data privacy topics currently. Driving this debate is a wide gap in thinking as well as in practice by many countries. To make the matter even more difficult, the scope of the debate ranges from online to offline data, impacting nearly every business in one way or another.

---

# Specific Issues of Concern

---

- ☐ Jurisdiction
- ☐ Onward Transfer
- ☐ Legitimate processing
- ☐ Filings
- ☐ Employees
- ☐ Retention
- ☐ Disclosure to third parties

*Disclosure can present  
a large conflict of laws issue*

**Disclosure to third parties** is often related to retention. Countries are weighing the benefits of retention for national security and subsequent disclosure to law enforcement and other governmental agencies. The debate pushes further when companies want to proactively use the retained data for anti-fraud and anti-identity theft measures, and proactively report suspicious activities.

---

# Privacy Resources

---

- ☐ Stay informed
  - ☐ Validate Resources
  - ☐ Work with your government team
  - ☐ Engage in proactive outreach
  - ☐ Join industry groups
  - ☐ Ask DPA's directly
  - ☐ Don't rely solely on my presentation ! 😊
-

# U.S. Resources

---

## The CAN SPAM Act

<http://www.ftc.gov/bcp/online/pubs/buspubs/canspam.htm>

## Securing Your Server

<http://www.ftc.gov/bcp/online/edcams/spam/secureyourserver/index.htm>

## Honoring Unsubscribe Claims

<http://www.ftc.gov/bcp/online/pubs/alerts/remvalrt.htm>

## California Security Breach Notice Act. – requires notice of a security breach.

<http://www.privacy.ca.gov/code/cc1798.291798.82.htm>

## California Online Privacy Protection Law (AB 68) – Requires a posted privacy policy.

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=22001-23000&file=22575-22579>

## California's "Shine the light" Law(SB 27) – Requires disclosure of sharing for marketing purposes.

<http://www.epic.org/privacy/profiling/sb27.html>

---



# International Resources

---

## APEC Background

[http://www.apec.org/apec/apec\\_groups/som\\_special\\_task\\_groups/electronic\\_commerce.html](http://www.apec.org/apec/apec_groups/som_special_task_groups/electronic_commerce.html)

## EU Data Directive Resources

[http://europa.eu.int/comm/justice\\_home/fsj/privacy/index\\_en.htm](http://europa.eu.int/comm/justice_home/fsj/privacy/index_en.htm)

## Organization for Economic Cooperation and Development (OECD)

<http://www1.oecd.org/publications/e-book/9302011E.PDF>

## Japan Data Privacy Resource

<http://www.privacyexchange.org/japan/japanindex.html>

## Canadian Privacy Resources

[http://www.privcom.gc.ca/legislation/index\\_e.asp](http://www.privcom.gc.ca/legislation/index_e.asp)

## Proposed EU rules on communication data retention for law enforcement

<http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1167&format=HTML&aged=0&language=EN&guiLanguage=en>

---

# International Resources

---

## **U.S. Safeharbor**

[http://www.export.gov/safeharbor/sh\\_overview.html](http://www.export.gov/safeharbor/sh_overview.html)

## **India Data Protection Website**

<http://www.mit.gov.in/>

## **India Data Protection News**

[http://www.infoworld.com/article/05/08/29/HNindiapenalties\\_1.html](http://www.infoworld.com/article/05/08/29/HNindiapenalties_1.html)

## **Airline Passenger Data**

[http://news.yahoo.com/s/ap/20051003/ap\\_on\\_bi\\_ge/eu\\_canada\\_aires](http://news.yahoo.com/s/ap/20051003/ap_on_bi_ge/eu_canada_aires)

## **Article 29 Opinion on Binding Corporate Rules**

<http://www.informationcommissioner.gov.uk/cms/DocumentUploads/Binding%20corporate%20rules%20cooperation%20procedure.pdf>

## **Article 29 Binding Corporate Rule Checklist**

<http://www.informationcommissioner.gov.uk/cms/DocumentUploads/Article%20Article%2029%20binding%20corporate%20rules%20application%20checklist.pdf>

---

# Privacy Tips

---

## **Have a security policy**

California law allows a breach notification pursuant to a security policy.

## **Have an incident response policy**

Have the notice ready along with the press release so you can focus on more important matters at 3 a.m.

## **Encrypt personal information**

Store sensitive information behind firewalls, separate from a connected server, and in an encrypted format.

## **Have a global policy in place for all customers, vendors, and employees**

Treat all personal information under the same policy to avoid 'chopped liver' issues.

## **If you collect personal information, publish a privacy policy.**

Watch out for new sites that pop-up.

---

# Thank You.

---

**Contents and comments provided during this presentation are the opinions of Scott Shipman and not those of eBay Inc. or subsidiaries.**

**Questions may be directed to [Scott@ebay.com](mailto:Scott@ebay.com) or you can Skype me at shippycalifornia.**

---